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Summary record of the 2710th meeting

Topic:
Adoption of the report

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“The Commission decided further to recommend that the General Assembly consider, at a later stage, and in light of the importance of the topic, the possibility of convening an international conference of plenipotentiaries to examine the draft articles on responsibility of States for internationally wrongful acts with a view to concluding a convention on the topic. The Commission was of the view that the question of the settlement of disputes could be dealt with by the above-mentioned international conference, if it considered that a legal mechanism on the settlement of disputes should be provided in connection with the draft articles.”

72. Mr. GAJA proposed changing the word “concluding”, in the penultimate sentence, to “adopting”.

Section C was adopted.

D. Tribute to the Special Rapporteur

73. The CHAIRMAN invited the Commission to consider the proposed text of a tribute to the Special Rapporteur on the topic of State responsibility, Mr. James Crawford. The text read:

“At its 2709th meeting, on 9 August 2001, the Commission, after adopting the text of the draft articles on responsibility of States for internationally wrongful acts, adopted the following resolution by acclamation:

‘The International Law Commission,

‘Having adopted the draft articles on responsibility of States for internationally wrongful acts,

‘Expresses to the Special Rapporteur, Mr. James Crawford, its deep appreciation and warm congratulations for the outstanding contribution he has made to the preparation of the draft articles through his tireless efforts and devoted work, and for the results achieved in the elaboration of the draft articles on responsibility of States for internationally wrongful acts.’

“The Commission also expressed its deep appreciation to the previous Special Rapporteurs, Messrs. Francisco V. García Amador, Roberto Ago, Willem Riphagen and Gaetano Arangio-Ruiz, for their outstanding contribution to the work on the topic.”

Section D was adopted.

The members of the Commission gave Mr. Crawford, Special Rapporteur, a standing ovation.

74. Mr. CRAWFORD (Special Rapporteur) expressed gratitude to the Commission for its vote of thanks, and for the extraordinary support it had given him over the previous four years. He wished to pay particular tribute to the four consecutive Chairmen of the Drafting Committee, namely, Mr. Simma, Mr. Candioti, Mr. Gaja and Mr. Tomka; and also to Mr. Melescanu for his helpful work on the commentaries. The outcome of that collec-

tive endeavour was a work of which the Commission could be proud.

Chapter V, as amended, was adopted.

The meeting rose at 4.30 p.m.

2710th MEETING

Friday, 10 August 2001, at 10.05 a.m.

Chairman: Mr. Peter KABATSI

Present: Mr. Addo, Mr. Al-Baharna, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kamto, Mr. Kateka, Mr. Melescanu, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka, Mr. Yamada.

Draft report of the Commission on the work of its fifty-third session (concluded)

CHAPTER I. Organization of the session (A/CN.4/L.604)

Paragraphs 1 to 7

Paragraphs 1 to 7 were adopted.

Paragraph 8

1. Mr. TOMKA said that mention should also be made in paragraph 8 (a) of the open-ended working group to consider the main issues pending, chaired by the Special Rapporteur.

2. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to Mr. Tomka’s proposal and said that the secretariat would insert the necessary addition.

It was so agreed.

Paragraph 8 was adopted on that understanding.

Paragraphs 9 and 10

Paragraphs 9 and 10 were adopted.

Chapter I, as amended, was adopted.

CHAPTER II. Summary of the work of the commission at its fifty-third session (A/CN.4/L.605)

Paragraphs 1 and 2

3. The CHAIRMAN said that paragraphs 1 and 2 would be supplemented by the secretariat in accordance with the decisions taken by the Commission.

4. Mr. TOMKA proposed that the order of paragraphs 1 and 2 should be reversed, like that of the chapters of the draft report to which they referred, so as to take into account the fact that the bulk of the work of the Commission at the current session had been on the topic of State responsibility, that the topic had been on the agenda of the Commission for more than 40 years and the work had finally been completed. He had consulted the Special Rapporteur on the topic of international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities), who had expressed his agreement.

5. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to Mr. Tomka's proposal.

It was so agreed.

6. Mr. PELLET proposed that the Commission should state in paragraphs 1 and 2 that it had also adopted all of the corresponding commentaries.

7. Mr. ECONOMIDES said it was surprising that the activities of the Planning Group, which had met several times in the course of the current session, were not mentioned. He proposed that a sentence should be added to make good that oversight.

Paragraphs 1 and 2, as amended, were adopted.

Paragraph 3

8. Mr. PELLET proposed that the second sentence should be simplified and made less clumsy by deleting the phrase "as well as late reservations and interpretation of declarations", in the second sentence.

Paragraph 3, as amended, was adopted.

Paragraphs 4 to 6

Paragraphs 4 to 6 were adopted.

Paragraph 7

9. Mr. PELLET said that the International Law Seminar should not be mentioned in the chapter of the report concerning the work of the Commission. The Seminar was not organized by the Commission, whose members were in no way associated with selecting the participants or preparing the programme for the Seminar. He therefore proposed that paragraph 7 should simply be deleted.

10. Mr. SIMMA, supported by Mr. GALICKI, Mr. GOCO, Mr. RODRIGUEZ CEDEÑO and Mr. KATEKA, said he was opposed to omitting paragraph 7 for two reasons, namely, the International Law Seminar, held at the annual session of the Commission, had always been mentioned in the report, and the Seminar was referred to in the annual resolution of the General Assembly on the report of the Commission on the work of its session.

11. Further to an exchange of views in which Mr. BROWNLIE, Mr. KAMTO, Mr. MELESCANU and Mr. ROSENSTOCK took part, Mr. TOMKA proposed that the text of paragraph 7 should be reworded as follows: "A training seminar organized by the United Nations Office at Geneva was held with 24 participants of different nationalities. Some members of the Commission gave lectures at the Seminar."

12. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to Mr. Tomka's proposal.

It was so agreed.

Paragraph 7, as amended, was adopted.

Paragraph 8

Paragraph 8 was adopted.

Chapter II, as amended, was adopted.

CHAPTER III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.606 and Add.1 and 2)

Paragraph 1 (A/CN.4/L.606)

Paragraph 1 was adopted.

A. Reservations to treaties

Paragraphs 2 to 4

Paragraphs 2 to 4 were adopted.

Paragraph 5

13. Mr. SIMMA said that the word "condemned", in the penultimate sentence, was too strong. It should be replaced by "discouraged".

14. Mr. GAJA pointed out that "all" members of the Commission and not "some" members regarded it as a practice to be discouraged.

15. Mr. MELESCANU proposed that the word "condemned" should simply be deleted.

16. Mr. HAFNER said he endorsed Mr. Melescanu's proposal and suggested that "should not be embodied in the Guide" should be replaced by "should not be dealt with in the Guide".

17. Mr. MELASCANU proposed the following wording: “. . . should not be encouraged and should not, therefore, be embodied in the Guide”.

18. Mr. ROSENSTOCK proposed another formulation, namely, “Nevertheless, some members of the Commission consider that this practice should not be dealt with in the Guide to Practice, so as not to encourage it.”

19. Mr. KAMTO proposed it should simply be said that the practice was contrary to international law or to the 1969 and 1986 Vienna Conventions.

20. Mr. PELLET (Special Rapporteur), supported by Mr. AL-BAHARNA said that the explanations appeared in the report. The text under consideration was a summary and hence it should not enter into details. He proposed the following wording: “Nevertheless, some members of the Commission consider that including this practice in the Guide to Practice could unduly encourage the late formulation of reservations.”

Paragraph 5, as amended, was adopted.

Paragraph 6

Paragraph 6 was adopted.

Paragraph 7

21. Mr. GAJA said that the word “unlawful” should be replaced by “inadmissible” in the last sentence.

22. Mr. PELLET (Special Rapporteur) said that the proper term in French was *illicite* and it should therefore be maintained in the French text.

Paragraph 7, as amended, was adopted.

Paragraph 8

Paragraph 8 was adopted.

Section A, as amended, was adopted.

B. Diplomatic Protection (A/CN.4/L.606/Add.1)

Section B was adopted.

C. Unilateral acts of States (A/CN.4/L.606/Add.2)

23. Further to an exchange of views in which Mr. AL-BAHARNA, Mr. BROWNLIE, Mr. CANDIOTI, Mr. CRAWFORD, Mr. ECONOMIDES, Mr. GOCO, Mr. MELESCANU, Mr. PELLET, Mr. Sreenivasa RAO, Mr. RODRÍGUEZ CEDEÑO and Mr. SIMMA took part, the CHAIRMAN noted that most members considered that the issues were too theoretical and too complex for States to respond and it would be better to invite States to

provide information on their practice in regard to unilateral acts through the questionnaire on unilateral acts of States. He therefore suggested a paragraph to read: “The Commission drew attention to a questionnaire prepared by the Special Rapporteur which will be circulated to Governments. The Commission encourages Governments to reply to the questionnaire as soon as possible.”

24. If he heard no objection, he would take it that the Commission agreed to that suggestion.

It was so agreed.

Section C, as amended, was adopted.

Chapter III, as amended, was adopted.

CHAPTER IX. Other decisions and conclusions of the Commission (concluded)* (A/CN.4/L.612)

D. Representation at the fifty-sixth session of the General Assembly (concluded)*

Paragraph 14

25. The CHAIRMAN said it was his understanding that the Commission agreed that the Special Rapporteur on the topic of State responsibility, Mr. James Crawford, should attend the discussion in the Sixth Committee when it came to take up the report of the Commission on the work of its fifty-third session.

It was so agreed.

Paragraph 14 was adopted.

Section D, as amended, was adopted.

Chapter IX, as amended, was adopted.

The draft report of the Commission on the work of its fifty-third session, as a whole, as amended, was adopted.

Closure of the session

26. After the customary exchange of courtesies, the CHAIRMAN declared the fifty-third session of the International Law Commission closed.

The meeting rose at 11.35 a.m.

* Resumed from the 2708th meeting.